

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GERALD R TARUTIS as guardian ad  
litem for A.B., a minor, and SHANI  
BERRY,

Plaintiffs,

v.

WAL-MART STORES, INC., and  
SPAULDING LIGHTING, INC.,

Defendants.

CASE NO. C12-5076 RJB

ORDER GRANTING PLAINTIFF'S  
MOTION TO DISMISS WITHOUT  
PREJUDICE OF CLAIMS AGAINST  
SPAULDING LIGHTING, INC. AND  
DENYING AS MOOT DEFENDANT  
SPAULDING LIGHTING'S MOTION  
FOR SUMMARY JUDGMENT

This matter comes before the Court on Defendant Spaulding Lighting's (Spaulding) motion for summary judgment. Dkt. 33. The Plaintiff Gerald R. Tarutis, as guardian ad Litem for minor A.B. (Tarutis), filed a response stating that Plaintiff Tarutis "does not present evidence to controvert Spaulding Lighting's Motion." Dkt. 43 p. 1. Spaulding filed a reply indicating that its motion was unopposed and requesting dismissal of Plaintiff's claims with prejudice. Dkt. 46. On the same date Spaulding filed its reply, Plaintiff filed a request pursuant to Fed. R. Civ. P. 41(a)(2) for voluntary dismissal without prejudice of the claims against Spaulding. Dkt. 47.

ORDER GRANTING PLAINTIFF'S MOTION TO  
DISMISS WITHOUT PREJUDICE OF CLAIMS  
AGAINST SPAULDING LIGHTING, INC. AND- 1

# **SUMMARY JUDGMENT AND DISMISSAL WITHOUT PREJUDICE**

Federal Rule of Civil Procedure 41(a)(2) allows a plaintiff, pursuant to an order of the court, and subject to any terms and conditions the court deems proper, to dismiss an action without prejudice at any time. See Fed. R. Civ. P. 41(a)(2); *Stevedoring Servs. of Am. v. Armilla Int'l B.V.*, 889 F.2d 919, 921 (9th Cir.1989). When ruling on a motion to dismiss without prejudice, the district court must determine whether the defendant will suffer some plain legal prejudice as a result of the dismissal. *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001); *Hyde & Drath v. Baker*, 24 F.3d 1162, 1169 (9th Cir.1994).

Legal prejudice does not result merely because a defendant will be inconvenienced by potentially having to defend the action in a different forum or because the dispute will remain unresolved. *WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1030, 1059 n. 6 (9th Cir. 2011). Expenses incurred in defending a lawsuit also do not amount to legal prejudice. *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir.1996). Legal prejudice does not result because the dispute remains unresolved, there is a threat of future litigation, or a plaintiff may gain a tactical advantage by the dismissal. *Smith*, 263 F.3d at 976. Instead, to have “legal prejudice,” there must be “prejudice to some legal interest, some legal claim, some legal argument.” *Id.*

Defendant Spaulding argues that it has expended significant effort in discovery and in preparation of its motion for summary judgment. Plaintiff, on the other hand, has offered no evidence or argument in response to Spaulding’s summary judgment motion. Spaulding asserts that Plaintiff is simply attempting to avoid an adverse ruling on the motion for summary judgment. Dkt. 53 pp. 3-6.

1 Although Spaulding has suffered some prejudice in having incurred litigation expenses,  
2 Spaulding has not demonstrated that it suffered prejudice to some legal interest. Further, any  
3 prejudice related to legal expenses incurred in connection with the instant motion for summary  
4 judgment may be lessened because Spaulding may apply the information gained here in a  
5 subsequent action, should one be filed.

6 The record presented indicates that the timing of Plaintiff's motion to dismiss, while not  
7 ideal, is not due to any fault of Plaintiff or his current attorney. All indications are that the minor  
8 Plaintiff's mother, Shani Berry, failed to prosecute the matter on the minor's behalf, and then  
9 essentially abandoned the prosecution of this matter. See Dkt. 45. Spaulding's motion for  
10 summary judgment was filed a week subsequent to the appearance of new counsel. See Dkt. 31  
11 and 33. The motion to dismiss without prejudice was filed in response to the motion for  
12 summary judgment. Dkt. 47.

13 As the Tenth Circuit has observed in the context of Rule 41(a)(2):

14 The district court should endeavor to insure substantial justice is accorded to both parties.  
15 A court, therefore, must consider the equities not only facing the defendant, but also  
16 those facing the plaintiff; a court's refusal to do so is a denial of a full and complete  
17 exercise of judicial discretion. In a complex, emotional case such as this, it is critically  
18 important when considering a motion to dismiss, the court give the equities of the  
19 plaintiff the attention deserved.

20 *Ohlander v. Larson*, 114 F.3d 1531, 1537 (10th Cir.1997). A district court is "obligated to  
21 consider the novelty of the circumstances" surrounding each case. *Ohlander*, 114 F.3d at 1531.  
22 As in *Ohlander*, this case presents unusual circumstances. Considering the equities facing both  
23 sides, the Court finds that Plaintiff should be permitted to voluntarily dismiss the case against  
24 Spaulding without prejudice and that Defendant would not suffer plain legal prejudice as a result  
of such a dismissal.

1 Defendant Spaulding's motion for summary judgment should be denied as moot.

2 **CONCLUSION**

3 Accordingly, it is hereby **ORDERED**:

- 4 1. Plaintiffs' motion for voluntary dismissal without prejudice of claims against  
5 Defendant Spaulding Lighting, Inc. (Dkt. 47) is **GRANTED**. This action is  
6 **DISMISSED WITHOUT PREJUDICE** against Defendant Spaulding Lighting, Inc.  
7 2. Defendant Spaulding Lighting, Inc.'s. Motion for Summary Judgment (Dkt. 33) is  
8 **DENIED** as **MOOT**

9 Dated this 5<sup>th</sup> day of February, 2013.

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12 ROBERT J. BRYAN  
13 United States District Judge  
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